

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

UNITED STATES OF AMERICA)	
)	
vs.)	3:06 CR- 95-W
)	
KEVIN FUCHS)	
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**MOTION TO CONTINUE THE TIME FOR SENTENCING AND ENLARGE TIME TO
FILE OBJECTIONS TO THE PSR**

KEVIN FUCHS, (“Fuchs”) through his counsel, KEVIN A. TATE, respectfully requests that this Court continue the time for sentencing from the **January 2008 Term** to the **March 2008 Criminal Term**, as well as, and enlarge the time for filing objections to the PSR.

1. Fuchs is scheduled for sentencing during the Court’s January 2008 criminal term. He is on bond and resides out of the district in Buffalo, New York. He remains employed and has had no violations of his release conditions.

2. Fuchs has previously sought and received an extension of time in order to obtain discovery to be reviewed by an intellectual property expert for the defense, for the purpose of challenging the loss amounts contained in the PSR. Fuchs’ was also awaiting additional discovery related to the nature and circumstances of his continuing assistance to the government which pre-dated his appointment of counsel and indictment in the instant matter.

3. Since the filing of the last motion to continue, two different United States Department of Justice (“DOJ”) attorneys have been assigned and subsequently left the case. Undersigned counsel is currently negotiating with Deputy Chief of Litigation, Rick Green to reach a joint stipulation as to the loss in this matter to obviate a hearing and certain protracted

litigation on the issue, which involves, discerning the valuation of software at the time it was downloaded. Undersigned counsel anticipates that this matter will resolve in a stipulation.

Additional time is required to undertake those negotiations, as well as, to consult with experts.

4. Undersigned counsel has been advised by attorney Green that the government will

file a 5K.1 motion on Fuchs behalf, and Fuchs has requested additional discovery related to this issue for the purpose of filing his own motion for downward departure. Attorney Green indicated that DOJ will honor this request, but, additional time is required to gather relevant information.

5. Additionally, undersigned counsel will be unavailable for the January 2008 term as he will be in a lengthy trial in the matter of United States v. Osuji, et al, in the Asheville Division commencing on January 7, 2008.

6. The DOJ attorney Green has also indicated that he will be preparing for and conducting two separate trials during January and February 2008 and does not oppose this motion.

WHEREFORE, defendant prays that his sentencing be continued from the **January, 2008 Criminal Term** to the **March 2008 Criminal Term**.

Respectfully submitted:

S/Kevin A. Tate
Kevin A. Tate
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CERTIFICATE OF SERVICE

I, Kevin A. Tate, Assistant Federal Defender, hereby certify that on November 28, 2007,
I served a copy of the attached **MOTION TO CONTINUE THE TIME FOR SENTENCING
AND ENLARGE TIME TO FILE OBJECTIONS TO THE PSR** upon Department of Justice
Attorney Rick Green via electronic mail, at address site Rick.Green@usdoj.gov.

S/ Kevin A. Tate
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